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October 16, 2006

ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Subject: In the Matter of Payphone Access Line Rates, Docket CC No. 96-128.

Dear Ms. Dortch:

We represent 51 payphone service providers ("Payphone Providers") in 11 states who are suing Qwest in federal court (in the "*Davel*" case) for overcharging them for payphone services, in violation of the Telecommunications Act, this Commission's implementing orders and the Commission's new services test ("NST"). The plaintiffs in the *Davel* case filed a petition for declaratory ruling in this docket on September 11, 2006 ("Petition").¹

The Payphone Providers submit this letter to respond to arguments by AT&T, Bell South, and Verizon ("RBOCs") in this docket on September 6, 2006. In particular, the Payphone Providers will demonstrate why the Commission should reject RBOCs' argument that the April 15, 1997 Waiver Order² only required refunds for the 34 day period from April 15th to May 19, 1996. Summarized, the RBOCs' September 6th arguments were that:

Payphone providers' petitions constitute improper collateral challenges to state commission determinations and state court judgments.

The availability of refunds depends on state law, including state procedural rules.

Whether a particular state determination is correct under the particular facts of the case is not an appropriate topic for a declaratory ruling.

¹ A complete listing of the clients in the *Davel* case is attached to the Petition.

² *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order*, 12 FCC Rcd 21,370 (Apr. 15, 1997) ("Waiver Order").

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The RBOCs sole commitment was to make specific filings – that is, those made pursuant to a Bureau waiver order – effective 34 days prior to their actual filing.

The first three arguments were addressed to the other petitions in this docket, of course, not the Petition against Qwest. The Payphone Providers merely wish to reiterate that those arguments can have no bearing whatsoever on their Petition, because unlike the other RBOCs, Qwest never sought state commissioner review or approval of its PAL rates from 1997 to 2002. Thus, there are no state commission or court orders to challenge, no state procedures that were invoked, and no state determinations for the Commission to review.

The fourth argument—an argument even Qwest does not make—is groundless. because (1) a 34 day refund period would violate the law that prohibits the Bureau from waiving statutory requirements like the NST, (2) a 34 day refund period would subvert the goals of Section 276 of the Telecommunications Act, (3) the plain language of the Waiver Order does not support a 34 day refund period, and (4) a 34 day waiver period is inconsistent with the RBOCs original request³ for the Waiver Order. The RBOC Coalition's only support for a 34 day refund period is its own wishful thinking.

I. A 34 DAY REFUND PERIOD WOULD VIOLATE THE PROHIBITION AGAINST WAIVING STATUTORY REQUIREMENTS

The Commission must address the question of how long after April 15, 1997 the RBOCs' refund obligation under the Waiver Order extended. The RBOC Coalition contends that the refund obligation only ran for 34 days, from April 15th until May 19th. The Payphone Providers contend the refund obligation ran until the RBOCs had in effect PAL tariffs that complied with the NST. Indeed, Qwest agrees on this point:

[The] carriers promised to make . . . refunds for rates paid between [April 15, 1997] and the effective date of the new tariffs. The refunds were to cover the period between April 15, 1997 and the date on which tariffs . . . took effect. . . . [W]hatever waiver of the filed tariff doctrine was envisioned by the Wavier Order was fulfilled upon the effective date of the new tariff . . .

Qwest Ex Parte Filing (Sept. 5, 2006)(emphasis added).

The 34 day refund period proposed by the RBOC Coalition would in effect be an illegal waiver by the Bureau of the statutory requirement that Qwest must meet the NST. The Bureau only has authority to “[a]ct on requests for interpretation or waiver of *rules*.” 47 C.F.R.

³ The request was made in 1997 by the “RBOC Coalition,” which included all three of the RBOCs and other companies.

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§ 0.91(b)(emphasis added). The Bureau cannot waive compliance with a *statute*.⁴ Since Section 276 required RBOCs to comply with the NST no later than April 15, 1997,⁵ the Waiver Order did not and could not waive the RBOC's obligation to comply with the NST. In contrast, the bar against the RBOCs collecting DAC before they complied with the NST was not mandated by Section 276. It was a Commission rule. *See Reconsideration Order*, ¶ 131. So, the only requirement that the Waiver Order waived was the requirement that RBOCs meet the NST before collecting DAC on April 15, 1997.

Due to these limits on the Bureau's authority, the waiver was limited and conditional. Under the waiver, RBOCs who wished to start collecting DAC on April 15, 1997, had to file their cost support with the states to review their existing PAL rates for NST compliance by May 19, 1997. If their existing PAL rates did not comply with the NST, they also had to file new tariffs with the states at rates they believed complied with the NST. And finally, they had to pay refunds to PAL customers based on the difference between the new rates, "*when effective*," and the existing PAL rates retroactive to April 15, 1997. None of this is consistent with the RBOCs' argument for a 34 day refund period.

II. A 34 DAY REFUND PERIOD WOULD SUBVERT THE GOALS OF SECTION 276 OF THE TELECOMMUNICATIONS ACT AND THE WAIVER ORDER

The 34 day refund period would not only be illegal. It would also undercut purpose of the Waiver Order, which was to advance "the twin goals of Section 276 of the Act," which are to "promot[e] both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public." Waiver Order at ¶ 3. Both goals could only be fully realized if two aspects of the Payphone Orders and Section 276 were fully and timely implemented on April 15, 1997. First, the RBOCs had to eliminate discriminatory access line and features tariffs by complying with the NST. This would promote fair competition and, by lowering costs of deployment, would lead to more widespread deployment of payphones. Second, RBOCs could receive dial around compensation ("DAC"). This would also promote a level competitive playing field and would, by increasing RBOCs' payphone revenues, lead to deployment of more payphones. Thus, if the Waiver Order blocked

⁴ The Commission is "without authority to waive statutory violations." In the Matter of Schools and Libraries Universal Service Support Mechanism, Fifth Report And Order And Order, 19 FCC Rcd 15808 at ¶ 29 (2004).

⁵ Section 276 refers to "the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623)," which include the New Services Test. 47 U.S.C. 276 (b)(1)(C). NST compliance was a necessary part of compliance with Section 276(a)(2), which prohibited RBOC discrimination in favor of their own payphones after the effective date of the rules adopted by the Commission in Section 276(b). The Section 276(b) rules (providing for dial-around compensation, elimination of subsidies, etc.) took effect April 15, 1997.

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or delayed implementation of either requirement, then the order would not and could not have had its intended affect of advancing the goals of Section 276.

The reason that allowing RBOCs to collect DAC under the conditions of the Waiver Order before they complied with the NST was expected to advance, rather than hinder, the twin goals of Section 276 is because the refund provisions were expected to have the same effect as NST compliance, *as if* such compliance had been in place by April 15, 1997. Since the RBOCs were required to file costs with the states by May 19, 1997, the expectation was that state review of the existing PAL tariffs and any necessary rate revisions would be implemented reasonably soon thereafter. The Bureau likely did not expect that one RBOC—Qwest—would fail to file any costs or NST-compliant rates for more than five years.

It makes no sense for the refund period to be only 34 days because that would leave no time for state commissions under typical state procedures to review the cost and tariff filings required by the Waiver Order and for new tariffs to take effect. For example, if an RBOC filed NST-compliant tariffs by the May 19, 1997 deadline that lowered PAL rates by \$10, the new rates would not go into effect immediately in most states. A typical notice period would be 30 days. *See, e.g.*, Rev. Code Wash. 80.36.110(1)(a).⁶ A state might be able to suspend a tariff for up to nine months or more for investigation, discovery, and hearings. *See, e.g.*, Rev. Code Wash. 80.04.130(1). Thus, the lower rate might not go into effect for almost a year after April 15, 1997. All this time, the RBOC would be violating the prohibition against discrimination in Section 276. Accordingly, only an open-ended refund obligation makes sense because only an open-ended refund obligation ensures that the discrimination prohibited by statute would be eliminated retroactively.

III. THE HISTORY AND PLAIN LANGUAGE OF THE WAIVER ORDER DOES NOT SUPPORT A 34 DAY REFUND PERIOD

Interpretation of the refund obligation as open-ended not only makes sense in light of the goals of Section 276 and the goals of the Waiver Order, it is the only interpretation consistent with the words chosen in the Order, as well as the history of the Order. On November 8, 1996, this Commission issued its Order on Reconsideration (FCC 96-439, CC Docket No. 96-128 and 91-35) (“Order on Reconsideration”). Paragraph 163 of the Order on Reconsideration made it clear that RBOCs’ intrastate tariffs “must be *filed* no later than January 15, 1997 and must be *effective* no later than April 15, 1997;” and that those tariffs must be “(1) cost based; (2) consistent with the requirements of Section 276 with regard, for example,

⁶ Subject to certain limitations depending on the procedures followed and commitments made by the utility filing the tariff. This statute is illustrative only, because state procedures vary widely. But delays in approving or modifying a tariff filing of several years are common. In Oregon, Qwest’s PAL rates have been under investigation since 1995 and are still unresolved more than 10 years later.

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to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory.” Order on Reconsideration, ¶ 163 (emphasis added). Thus, the RBOCs had five months’ notice that their intrastate payphone tariffs would have to be NST-compliant, and that such compliance might require rate revisions.

On April 4, 1997, the FCC issued its first waiver order (DA 97-678, CC Docket No. 96-128). In that order, the FCC granted RBOCs a “limited waiver” of the deadline for filing federal interstate tariffs for unbundled features and functions. That “limited waiver” allowed RBOCs to file such federal tariffs by May 19th, and have them become effective 15 days later, while still receiving dial-around compensation. However, that order reiterated that LECs would also have to have on file effective, NST-compliant, *intrastate* tariffs by April 15, 1997, in order to receive dial-around compensation. That first waiver order also concluded that the Commission did not have a sufficient record in front of it to determine whether the RBOCs’ intrastate basic PAL line tariffs complied with the NST, and specifically left determination of NST compliance to the states. *Id.* at ¶ 35. That order did not require refunds, as the Commission itself could review the rates filed by May 19, 1997, and, if appropriate, could issue suspension and/or accounting orders in that time, which would have the practical effect of requiring refunds should the rates subsequently be determined to be non-compliant.

On April 7, 1997, the RBOC Coalition once again submitted an *ex parte* filing, which expressed their members’ complete surprise (despite the clarity of the Order on Reconsideration) that their members’ *intrastate* rates would also have to be NST-compliant in order to receive dial-around compensation. Exhibit A (April 7, 1997 Kellogg letter). The RBOC Coalition (including Qwest) returned to this Commission only days later to beg for a waiver of the requirement that they have NST-compliant tariffs in effect by April 15, 1997 in order to receive millions of dollars in dial-around compensation. Exhibit B (April 10, 1997 Kellogg Letter).

Essentially, the RBOCs asked that the limited waiver issued by the Commission in the April 4th order for interstate tariffs be applied to intrastate payphone tariffs as well, with one significant twist. The RBOCs recognized that the process for examination and approval of intrastate tariffs at the state level might take much longer than the 15 days allowed on the federal level. Thus, the RBOCs offered that “*once the new state tariffs are in effect*, to the extent that the new tariff rates are lower than the existing ones [because of NST compliance] we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997.” April 10, 1997 Kellogg letter at 2 (emphasis added). The RBOCs’ stated purpose in offering the refund was to insure that the Payphone Providers “will suffer no disadvantage.”

The following day, the RBOCs further clarified what they were offering:

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To the best of my knowledge, all the RBOCs have (or will by April 15, 1997, have) effective state tariffs for all the basic payphone lines and unbundled features and functions required by the Commission's order. We are not seeking a waiver of that requirement. *We seek a waiver only of the requirement that those intrastate tariffs satisfy the Commission's "new services" test.* The waiver will allow LECs 45 days (from the April 4 Order) to gather the relevant cost information and either be prepared to certify that the existing tariffs satisfy the costing standards of the "new services" test or to file new or revised tariffs that do satisfy those standards. Furthermore, as noted, where new or revised tariffs are required and the new tariff rates are lower than the existing ones, we will undertake (consistent with state requirements) to reimburse or provide a credit back to April 15, 1997 to those purchasing the services under the existing tariffs.

Exhibit C at 1 (April 11, 1997 Kellogg Letter). It is worth noting that each of the Payphone Providers are one of "those purchasing the service under the existing tariffs."

This Commission adopted the RBOCs proposal in the Waiver Order. Hence, the compliance obligations are subject to the explicit filing deadline of May 19, 1997. In contrast, the refund obligation is not limited, except by reference to the "effective" date of the NST-compliant tariffs. This difference in the language of the order occurs not once, but repeatedly. The drafters were not careless. Rather, the phrases chosen were intended to accomplish compliance with the NST on the deadline of April 15, 1997, by a fully—rather than limited—retroactive application of the compliant tariffs. This Commission included an open-ended refund obligation exactly *because* neither the RBOCs nor the Commission could have any confidence as to any specific date by which the RBOCs' NST-compliant tariffs would be "effective" with the states, as each state had its own procedures. Thus, while the filing deadline is firm (i.e., May 19, 1997), the refund deadline is not.

IV. A 34 DAY WAIVER PERIOD IS INCONSISTENT WITH THE RBOCS ORIGINAL REQUEST FOR THE WAIVER ORDER

Interpretation of the refund obligation as open-ended is also consistent with the RBOCs' request. Though the RBOCs (but not Qwest) argue differently now, it is clear that at the time they requested the waiver, they expected to pay refunds from the date the tariffs became effective in the states, even if that date was much later than May 19, 1997. The RBOC Coalition's letter stated:

Specifically, we request that the Commission grant us 45 days from the April 4th Order to file new intrastate tariffs, in those States and for those services where new tariffs are required. Unlike with federal tariffs, there is of course **no**

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guarantee that the States will act within 15 days on these new tariff filings, particularly where rates are being increased pursuant to federal guidelines.

Exhibit B (April 10, 1997 Kellogg letter) (emphasis added). The RBOCs were asking for a similar waiver to what one the Bureau granted on April 4, 1997. But they pointed out that under state procedures they could not know when the new state tariffs would become effective. Thus, they only committed to file by May 19. In order to ameliorate the likely state delay, they requested an open-ended waiver of when they would have to have NST-compliant rates in effect as well as an open-ended refund period:

Provided, however, that **we undertake and follow-through on our commitment** to ensure that existing tariff rates comply with the “new services” test and, in those States file new tariff rates that will comply, we believe that we should be eligible for per call compensation starting on April 15th. **Once the new state tariffs go into effect**, to the extent that the new tariff rates are lower than the existing ones, we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997.

Exhibit B (April 10, 1997 Kellogg letter) (emphasis added). If the RBOCs had intended to limit their commitment to refund only from May 19 back to April 15, they would have instead said, “Once the new state tariffs are filed we will reimburse...”, rather than “once the tariffs go into effect...”.

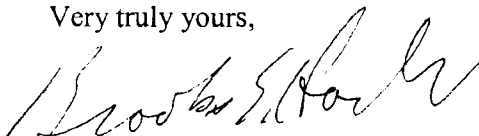
Because state commissions were likely to need much more than 34 days to review NST cost and tariff filings, the RBOCs *needed* open-ended waiver of the effectiveness of NST-compliant tariffs as well as an open-ended refund obligation. Otherwise, in states where they had to file new tariffs, they could only collect DAC between April 15 and May 19, unless by some miracle the state commission completed its review by May 19, 1997. Since the RBOCs who made filings by May 19, 1997, generally did so on or just a day or two before the 19th, it was a near certainty that NST-compliant tariffs would not be in effect until after the 19th. The Bureau responded to this need with an order that set a hard date only for the required state filings, but left actual compliance and refunds open-ended, in order to “advance the twin goals” of the statute.

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V. CONCLUSION

The Commission, in issuing its declaratory order in this docket, should rule that the Waiver Order requires refunds from the effective date of NST-compliant tariffs retroactive to April 15, 1997, with no limitation on the length of the refund period.

Very truly yours,



Brooks E. Harlow

cc w/enc: Ms. Pamela Arluk (via e-mail)
Ms. Amy Bender (via e-mail)
Ms. Lynne Engledow (via e-mail)
Ms. Diane Griffin Holland (via e-mail)
Mr. Christopher Killion (via e-mail)
Mr. Albert Lewis (via e-mail)
Mr. Marcus Maher (via e-mail)
Ms. Tamara Preiss (via e-mail)
Ms. Paula Silberthau (via e-mail)
Mr. Donald Stockdale (via e-mail)
Mr. Matt Warner (via e-mail)

EXHIBIT A

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April 7, 1997

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APR 7 1997

Federal Communications Commission
Office of Secretary

Ex Parte Filing

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

In re Matter of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996, CC Docket No. 96-128

Dear Mr. Caton:

Enclosed for filing in this docket are the original and one copy of a letter to Mary Beth Richards and Kathy Franco regarding the above-captioned matter. I sent this letter to Ms. Richards and Ms. Franco today on behalf of the RBOC Payphone Coalition. I would ask that you include the letter in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902. Thank you for your consideration.

Yours sincerely,

Michael Kellogg
Michael K. Kellogg

cc: Mary Beth Richards
Kathy Franco

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042

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Mary Beth Richards
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In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth and Kathy:

On behalf of the RBOC Payphone Coalition, I write in regard to the March 20, 1997 ex parte letter submitted by MCI, the March 28, 1997, ex parte letter submitted by AT&T, and the Commission's Order of last Friday, April 4, 1997 ("April 4 Order") in the above-captioned proceeding. MCI's and AT&T's letters both express concern that RBOCs have not filed rate revisions to eliminate intrastate payphone subsidies, and the Commission accordingly has clarified that intrastate payphone subsidy removal is a pre-requisite to RBOC eligibility for per-call compensation.

In the Coalition's view, MCI's and AT&T's complaints are unfounded and are being registered with the Commission prematurely. The payphone orders are clear: The removal of intrastate payphone cost recovery is a matter for the States in the first instance. Order on Reconsideration ¶ 131. The RBOCs are actively working with the States to identify and eliminate any intrastate payphone subsidies. To the extent AT&T and MCI wish the States to handle this matter differently than they are, they should so advise the state commissions before complaining to the FCC. If AT&T and MCI still believe there is a subsidy in a

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particular state after exhausting state remedies, then they should file a complaint with the Commission as indicated in the Bureau's April 4 Order (at 15 n.93).

Nevertheless, the Coalition does believe it appropriate to keep the Commission advised on how its orders and Congress's commands currently are being implemented in the States. Accordingly, the Coalition offers the following general description of how intrastate payphone subsidies are being identified and eliminated, the status of that process in each State, and a brief response to some of the arguments raised by AT&T and MCI regarding the magnitude of subsidies identified.

A. Cost/Subsidy Removal. Coalition members are removing intrastate payphone cost recovery elements and subsidies through a two-step process. First, they look to see whether any payphone cost recovery rate elements exist as part of non-payphone services rates. If so, such payphone cost recovery rate elements are eliminated. It turns out that very few States explicit payphone cost recovery rate elements in non-payphone services rates.

Second, Coalition members look to historical intrastate costs and intrastate payphone revenues to ensure that, even if payphone cost recovery rate elements have not been built into non-payphone services rates explicitly, payphone costs have not been recovered implicitly from non-payphone services rates. Specifically, each Coalition member looks at intrastate payphone costs and compares them to intrastate payphone revenues. If costs exceed revenues, the Coalition member treats the difference as if it were a subsidy and takes appropriate action to eliminate it. In North Carolina, for instance, BellSouth eliminated the historical intrastate payphone subsidy of \$2.4 million by adjusting the flat rate hunting charge so as to reduce revenue by \$2.4 million.

As you can see from the attached chart, this process has shown that there was an intrastate subsidy in some States but not others. This is to be expected, as each State has different regulatory treatment, different rates for payphone service, and different payphone costs.¹

¹It is for this reason that AT&T's reliance on the elimination of \$900,000 in subsidies in Alaska is misplaced. The amount of subsidies in Alaska depends not only on the number of

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B. Subsidy Amounts. It is the Coalition's understanding that, based on an estimate of interstate subsidies, some interexchange carriers have estimated that intrastate subsidies may be as high as \$750 million. But these arguments are fatally flawed. They assume that, because 75 percent of all costs are allocated to the intrastate jurisdiction and 25 percent to the interstate jurisdiction, then 25 percent of all subsidies will appear in the interstate and 75 percent in the intrastate. This assumption is simply wrong, because revenues do not follow the 75 percent/25 percent formula.

Coalition members do allocate approximately 25 percent of their payphone costs to the federal side. But every dime in federal payphone cost recovery comes through a subsidy -- the CCL charge -- because there is no interstate payphone rate through which those costs otherwise could be recovered. Thus, there are interstate payphone costs, but no direct interstate payphone revenues. Consequently, 100 percent of interstate payphone costs are recovered by means of a subsidy.

In contrast, all or almost all of intrastate payphone costs can be recovered directly through intrastate payphone revenues. This is true because, while about 75 percent of payphone costs are allocated to the intrastate jurisdiction, 100 percent of direct payphone revenues come from the intrastate jurisdiction. Since all or almost all intrastate payphone costs can be recovered through intrastate payphone revenues, intrastate payphone subsidies are typically small or non-existent.

Indeed, there is only one situation where the 25 percent/75 percent formula used by the interexchange carriers would be accurate: If Coalition members recovered all of their intrastate payphone costs through a subsidy, as they did with all of their interstate costs. But there is no State in which payphone service is free, and thus no State in which 100 percent of intrastate costs are recovered through intrastate subsidies.

payphones, but on the amount of payphone cost recovery allowed in the past, as well as the cost of providing payphone service in that unusually harsh environment. Alaska is a high-cost state and it has had artificially low coin rates. In any event, in many States, Coalition members have eliminated subsidies many times the size of the subsidy identified by Alaskan LECs.

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It is also the Coalition's understanding that the interexchange carriers are arguing that "subsidy removal" requires RBOCs not only to eliminate historic subsidies, but also to reduce their intrastate rates by an amount equal to expected income from per call compensation. See AT&T March 28 ex parte at 3. MCI argued this position before the Florida PSC, which properly rejected it. The purpose of the Act, as was made clear in the payphone orders, was to remove payphone subsidies, not to offset the higher costs of the IXC's who are required, for the first time, to pay per-call compensation to RBOCs on dial-around calls. This was the very conclusion reached by the Florida PSC, which deemed MCI's argument "unpersuasive" since "[t]he objective is to eliminate any LEC payphone subsidy, not offset the IXC's higher costs for dial-around compensation." Order, Petition by MCI Telecommunications Corporation for an order requiring BellSouth Telecommunications, Inc. to remove its deregulated payphone investment and associated expenses from its intrastate operations and reduce the Carrier Common Line rate element of its intrastate switched access charges by approximately \$36.5 million, Florida P.S.C. Docket No. 970173-TP at 5 (March 31, 1997) ("Florida Order").

Finally, the Coalition believes that some carriers are arguing to the Commission that, where subsidies are detected, any rate reductions must come out of access rates, and cannot come out of some other rate. But the argument is being raised in the wrong forum, as the question of how subsidies are eliminated is a question for the state commissions, which have sole responsibility for setting intrastate rates. Moreover, the argument lacks merit. Where payphone cost rate elements are explicitly recovered in a particular non-payphone rate, cost recovery should be eliminated from that rate. Where payphone costs were implicitly recovered from other, unidentified services -- where there is no explicit payphone cost recovery rate element built into non-payphone rates, but payphones revenues still were not covering payphone costs -- the subsidy could be in any rate or all rates. For this reason, the Florida PSC rejected MCI's argument that access charges, rather than rates for other services, had to be reduced:

Unlike the interstate case where a portion of the payphone investment and expense is specifically recovered through the CCL, any intrastate payphone subsidy could be recovered anywhere. Since intrastate rates are not based on allocated costs, there is no way of determining which rate elements are contributing to any payphone subsidy.

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Florida Order at 5. In such a situation, the States must have the discretion to identify which rates will be adjusted to eliminate the subsidy. The States not only are more familiar with local conditions, but have sole authority to regulate rates for the affected intrastate services.

I hope you find this update helpful and informative. If I can offer any further information or be of assistance, please feel free to call.

Sincerely yours,


Michael K. Kellogg

cc: Dan Abeyta	Linda Kinney
Thomas Boasberg	Carol Matthey
Craig Brown	A. Richard Metzger
Michelle Carey	John B. Muleta
Michael Carowitz	Judy Nitsche
James Casserly	Brent Olson
James Coltharp	Michael Pryor
Rose M. Crellin	James Schlichting
Dan Gonzalez	Blaise Scinto
Christopher Heimann	Anne Stevens
Radhika Karmarkar	Richard Welch
Regina Keeney	Christopher Wright

BELL ATLANTIC				
STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Delaware	None	None	None	None
Maryland	None	None	AT&T (Letter filed 03/28)	None
New Jersey	None	None	None	None
Pennsylvania	None	None	None	None
Virginia	None	None	MCI (Letter filed 02/10)	None
West Virginia	None	None	None	None
Washington, D.C.	None	None	None	None

BELLSOUTH

STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Alabama	None	None	AT&T (3/25); Gulf States Pub. Comm. Council (3/25)	Cost Study Filed
Florida	None	\$6,500,000	MCI (2/7); Fla. Pub. Comm. Council (3/6 & 10)	\$6,500,000 rate reduction (4/15)
Georgia	None	None	Ga. Pub. Comm. Ass'n (3/12); Consumer's Util. Counsel (3/20)	Cost Study Filed
Kentucky	None	\$1,700,000	MCI (3/20)	\$1,700,000 rate reduction (tariff pending)
Louisiana	None	\$2,600,000	MCI (3/19)	\$2,600,000 rate reduction (to be acted on 4/16, retroactive to 4/1)
Mississippi	None	\$1, 400,000	None	\$1,400,000 rate reduction (3/20)
North Carolina	None	\$2,400,000	MCI (3/27); N.C. Payphone Ass'n (3/20)	\$2,400,000 rate reduction (4/1)
South Carolina	None	\$2,500,000	S.C. Pub. Comm. Ass'n (2/27); Consumer Adv. (3/6)	\$2,500,000 rate reduction (pending)
Tennessee	None	\$800,000	TN Payphone Ass'n (3/14)	\$800,000 rate reduction (pending)

NYNEX				
STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Connecticut	None	None	None	None
Maine	None	None	None	None
Massachusetts	None	\$11,300,000	MCI (3/28) New Eng. Publ. Payphone Council (3/26) Att'y Gen'l (3/14) Nat'l Cons. Law Center (3/28)	\$32,100,000 Price Cap Adjustment (retroactive to 4/1)
New Hampshire	None	\$2,400,000	MCI (3/31) Office of Cons. Adv. (automatic) Union Tel. (3/6) New Eng. Publ. Payphone Council (3/17) N.H. Legal Assistance (3/12)	\$4,200,000 Rate Adjustment (expected 4/14)
New York	None	None	None	None (3/31 Order)
Rhode Island	None	None	None	None (Letter filed and accepted 2/19)
Vermont	None	\$1,800,000	Dep't Pub. Srv. (3/12) MCI (4/7)	\$1,900,000 Extended Area Service Expansions (Pending)

PACIFIC/NEVADA BELL				
STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
California	None	None	None	None
Nevada	None	None	None	Cost study Filed; Open Proceeding.

SOUTHWESTERN BELL				
STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Arkansas	None	**	None	**
Kansas	None	None	AT&T (3/6); Kansas Payphone Ass'n (2/7)	Open Proceeding
Missouri	None	\$600,000	MCI (2/21); Midwest Ind. Coin Payphone Ass'n (3/24)	Open Proceeding
Oklahoma	None	None	AT&T, MCI, various PSPs (not on subsidy issue)	Open Proceeding
Texas	None	None	MCI (1/24), AT&T (2/21), Texas Payphone Ass'n (3/14)	Open Proceeding
** Under investigation; filing addressing subsidy issue will be made prior to April 15.				

U S WEST				
STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Arizona	None	None	None	None
Colorado	None	None	None	None
Idaho	None	None	None	None
Iowa	None	None	None	None
Minnesota	None	None	None	None
Montana	None	None	None	None
Nebraska	None	None	None	None
North Dakota	None	None	None	None
New Mexico	None	None	MCI (3/21) AT&T (3/17)	Open Proceeding
Oregon	Yes**	None	None	No Adjustment to Rates; \$636,526 Revenue Requirement Adjustment**
South Dakota	Yes**	None	None	No Adjustment to Rates; \$209,948 Revenue Requirement Adjustment**
Utah	None	None	None	None
Washington	Yes**	None	None	No Adjustment to Rates; \$2,081,169 Revenue Requirement Adjustment**
Wyoming	None	None	None	None
**No adjustment to rates required because current intrastate CCL charge is below the current and adjusted revenue requirement.				

EXHIBIT B

A5691-524 S. April 14

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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April 10, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth:

I am writing on behalf of the RBOC Payphone Coalition to request a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions, as set forth in the Commission's Orders in the above-captioned docket. I am also authorized to state that Ameritech joins in this request.

As we discussed yesterday, and as I explained in my Letter of April 3, 1997, none of us understood the payphone orders to require existing, previously-tariffed intrastate payphone services, such as the COCOT line, to meet the Commission's "new services" test. It was our good faith belief that the "new services" test applied only to new services tariffed at the federal level. It was not until the Bureau issued its "Clarification of State Tariffing Requirements" as part of its Order of April 4, 1997, that we learned otherwise.

In most States, ensuring that previously tariffed payphone services meet the "new services" test, although an onerous process, should not be too problematic. We are gathering the relevant cost information and will be prepared to certify that those tariffs satisfy the costing standards of the "new services" test. In some States, however, there may be a discrepancy between the existing state tariff rate and the "new services" test; as a result, new tariff rates may have to be filed. For example, it appears that, in a few States, the existing state tariff rate for the COCOT line used by independent PSPs may be

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 10, 1997
Page 2

too low to meet the "new services" test and will therefore have to be raised.

In order to allow deregulation to move forward and ensure that LEC PSPs are able to compete on a level playing field starting, as planned, on April 15, 1997, we propose that the limited waiver issued by the Commission on April 4 for interstate tariffs apply to intrastate payphone tariffs as well. Specifically, we request that the Commission grant us 45 days from the April 4th Order to file new intrastate tariffs, in those States and for those services where new tariffs are required. Each LEC will undertake to file with the Commission a written ex parte document, by April 15, 1997, attempting to identify those tariff rates that may have to be revised.

Unlike with federal tariffs, there is of course no guarantee that the States will act within 15 days on these new tariff filings, particularly where rates are being increased pursuant to federal guidelines. Provided, however, that we undertake and follow-through on our commitment to ensure that existing tariff rates comply with the "new services" test and, in those States and for those services where the tariff rates do not comply, to file new tariff rates that will comply, we believe that we should be eligible for per call compensation starting on April 15th. Once the new state tariffs go into effect, to the extent that the new tariff rates are lower than the existing ones, we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997. (I should note that the filed-rate doctrine precludes either the state or federal government from ordering such a retroactive rate adjustment. However, we can and do voluntarily undertake to provide one, consistent with state regulatory requirements, in this unique circumstance. Moreover, we will not seek additional reimbursement to the extent that tariff rates are raised as a result of applying the "new services" test.)

The LECs thus ask the Commission to waive the requirement that effective intrastate payphone tariffs meet the "new services test," subject to three conditions: (1) LECs must file a written ex parte with the Commission by April 15, 1997, in which they attempt to identify any potentially non-compliant state tariff rates; (2) where a LEC's state tariff rate does not comply with the "new services" test, the LEC must file a new state tariff rate that does comply within 45 days of the April 4, 1997 Order, and (3) in the event a LEC files a new tariff rate to comply with the "new services" test pursuant to this waiver, and the new tariff rate is lower than the previous tariff rate as a result of applying the "new services" test, the LEC will undertake

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 10, 1997
Page 3

(consistent with state regulations) to provide a credit or other compensation to purchasers back to April 15, 1997.

The requested waiver is appropriate both because special circumstances warrant a deviation from the general rule and because the waiver will serve the public interest. Because the federal "new services" test has not previously been applied to existing state services -- and because the LECs did not understand the Commission to be requiring such an application of the test until the Commission issued its clarification order just a few days ago -- special circumstances exist to grant a limited waiver of brief duration to address this responsibility. In addition, granting the waiver in this limited circumstance will not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated from payphones. And competing PSPs will suffer no disadvantage. Indeed, the voluntary reimbursement mechanism discussed above -- which ensures that PSPs are compensated if rates go down, but does not require them to pay retroactive additional compensation if rates go up -- will ensure that no purchaser of payphone services is placed at a disadvantage due to the limited waiver.

Accordingly, we request a limited waiver, as outlined above, of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

We appreciate your urgent consideration of this matter. Copies of this letter have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,


Michael K. Kellogg

cc: Dan Abeyta	Christopher Heimann	Brent Olson
Thomas Boasberg	Radhika Karmarkar	Michael Pryor
Craig Brown	Regina Keeney	James Schlichting
Michelle Carey	Linda Kinney	Blaise Scinto
Michael Carowitz	Carol Matthey	Anne Stevens
James Casserly	A. Richard Metzger	Richard Welch
James Coltharp	John B. Muleta	Christopher Wright
Rose M. Crellin	Judy Nitsche	
Dan Gonzalez		

EXHIBIT C

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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April 11, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Comm'n
1919 M Street, N.W., Room 500
Washington, D.C. 20554

In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth:

This letter will clarify the request I made yesterday on behalf of the RBOCs for a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

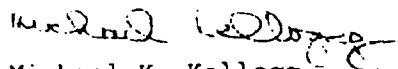
To the best of my knowledge, all the RBOCs have (or will by April 15, 1997, have) effective state tariffs for all the basic payphone lines and unbundled features and functions required by the Commission's order. We are not seeking a waiver of that requirement. We seek a waiver only of the requirement that those intrastate tariffs satisfy the Commission's "new services" test. The waiver will allow LECs 45 days (from the April 4 Order) to gather the relevant cost information and either be prepared to certify that the existing tariffs satisfy the costing standards of the "new services" test or to file new or revised tariffs that do satisfy those standards. Furthermore, as noted, where new or revised tariffs are required and the new tariff rates are lower than the existing ones, we will undertake (consistent with state requirements) to reimburse or provide a credit back to April 15, 1997, to those purchasing the services under the existing tariffs.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 11, 1997
Page 2

I hope this clarification is helpful. Copies of this letter have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,


Michael K. Kellogg

cc: Dan Abeyta	Linda Kinney
Thomas Boasberg	Carol Matthey
Craig Brown	A. Richard Metzger
Michelle Carey	John B. Muleta
Michael Carowitz	Judy Nitsche
James Casserly	Brent Olson
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January 8, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Subject: In the Matter of Payphone Access Line Rates
CC Docket No. 96-128

Dear Ms. Dortch:

We represent Davel Communications, Inc., *et al.*, a group of 51 payphone service providers (collectively "Petitioners"), in a lawsuit in federal court against Qwest for violations of the Telecommunications Act of 1996 and this Commission's implementing orders. Petitioners filed a Petition For Declaratory Ruling in this docket on September 11, 2006.

Petitioners submit this letter in response to Payphone Association of Ohio's Petition to Preempt and for a Declaratory Ruling, filed in this docket on December 28, 2006 ("*PAO Petition*"). Although Petitioners support the PAO Petition in substance, Petitioners also wish to note facts that distinguish their case against Qwest from the facts underlying the PAO Petition. Specifically, in contrast to SBC in Ohio: (1) Qwest failed to have on file either NST-compliant rates or cost studies by the May 19, 1997 deadline in the Waiver Order;¹ (2) there has been no final order or decision by any state utility commission or state court in Petitioners' case against Qwest, and thus *res judicata* does not apply to Petitioners' claims.

1. Unlike SBC, Qwest Did Not File NST-Compliant Rates or Cost Studies Until 2002.

The Petitioners have purchased public access line ("PAL") service and fraud protection service from Qwest since 1997. Pursuant to the directive of § 276(a) of the Telecommunications Act, this Commission required RBOCs such as Qwest have on file with

¹ This is in contrast to all other RBOCs that are the subject of petitions regarding the waiver order in this docket.

Marlene H. Dortch
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January 8, 2007
Page 2

state utility commissions tariffs that comply with the New Services Test (“NST”). The RBOCs also were required to file cost support data to support those tariffs. Qwest and the other RBOCs, however, determined they could not meet the deadline of April 15, 1997, and asked for an extension so they could begin collecting dial-around compensation. On April 15, 1997, this Commission issued an order (“Waiver Order”) granting an extension until May 19, 1997, for the RBOCs to have NST-compliant rates on file.

Qwest failed to have on file any NST-complaint PAL and fraud protection rates by May 19, 1997, as required by the Waiver Order. Qwest also failed to file any cost studies by that time. For the states at issue, Qwest did not even attempt to comply with this Commission's Payphone Orders until 2002.² Qwest filed NST-compliant rates for the first time in 2002, and those rates were substantially lower than its rates effective during the period of 1997-2002.

These critical facts distinguish the Petitioners’ case against Qwest from the petition filed by the Payphone Association of Ohio (“PAO”). In the PAO’s case, on May 16, 1997, SBC filed with the Public Utilities Commission of Ohio (“PUCO”) cost support data and a letter committing SBC to refund payphone service providers for any downward revision of its rates. *PAO Petition* ¶ 9. Moreover, on September 25, 1997, the PUCO approved “the proposed tariffs and carrier common line rate reductions” filed by SBC and the other local exchange carriers. *PAO Petition* ¶ 11.

While Qwest did not file any new rates or cost data with the state utility commissions by the May 19, 1997 deadline set by this Commission, SBC filed its cost support data with the PUCO on May 16, 1997. *See PAO Petition* ¶ 9. Indeed, Qwest made no attempt to file cost data or NST-compliant rates until 2002 -- five years after the deadline had passed for such filings. Moreover, even though Qwest ignored the filing deadline, it still took advantage of the Waiver Order and began collecting dial-around compensation from April 15, 1997. Qwest should not be allowed to reap the benefits of its intentional violation of the Waiver Order. The Petitioners are entitled to a refund of the amount by which Qwest’s rates exceeded legal limits under the New Services Test, for the period from April 15, 1997 until the effective date of Qwest’s NST-compliant rates.

2. Petitioners’ Right to Refunds Is Not Barred By *Res Judicata*.

Qwest’s September 6, 2006 *ex parte* filing in this docket suggests that the Petitioners’ claims for refunds are barred by *res judicata*. This argument is without merit, as there has been no order issued in this case by any state utility commission or state court. This

² Petitioners have identified the states at issue and other details regarding its lawsuit against Qwest in previous *ex parte* filings in this Docket.

MILLER | NASH LLP
ATTORNEYS AT LAW

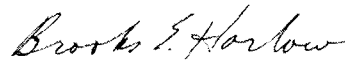
Marlene H. Dortch
January 8, 200
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Page 3

fact further distinguishes Petitioners' case against Qwest from the PAO's case against SBC.³ In the PAO case, the PUCO issued an order on September 25, 1997, approving SBC's proposed payphone tariffs. *PAO Petition* ¶ 11. Ultimately, the Supreme Court of Ohio affirmed the PUCO's rulings as to SBC. *See PAO Petition*, at 18.

By way of contrast, no state utility commission issued any order regarding whether Qwest's PAL or fraud protection rates complied with the NST in any of the states at issue in the *Petitioners'* case. Furthermore, unlike the PAO case, no party to the *Petitioners'* case has sought state court review, and there have been no state court decisions in this case. Principles of *res judicata* simply do not apply as a bar to Petitioners' claims against Qwest, as there has been no final order by any state commission or court as to whether the Petitioners are entitled to refunds from Qwest.

We hope this letter clarifies the differences between the Petitioners Petition and the PAO's Petition. Please contact me if you have any additional questions.

Very truly yours,



Brooks E. Harlow

cc: Mr. Donald Stockdale (via e-mail)
Mr. Al Lewis (via e-mail)
Ms. Pamela Arluk (via e-mail)
Ms. Tamara Priess (via e-mail)
Ms. Diane Griffin Holland (via e-mail)
Mr. Christopher Killion (via e-mail)
Ms. Paula Silberthau (via e-mail)

³ By highlighting these distinctions, Petitioners do not in any way suggest that the PAO's petition is barred by *res judicata*.

MILLER | NASH LLP
ATTORNEYS AT LAW

Marlene H. Dortch
January 8, 200
January 8, 2007
Page 4

HARLOW:cm
File No.: 516841-0001
Doc ID: SEADOCS:260303.1

Brooks E. Harlow
brooks.harlow@millernash.com
(206) 777-7406 direct line

February 22, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Subject: In the Matter of Payphone Access Line Rates
CC Docket No. 96-128

Dear Ms. Dortch:

This firm represents Davel Communications, Inc., *et al.*, a group of 51 payphone service providers (collectively "Petitioners") who filed a Petition For Declaratory Ruling in this docket on September 11, 2006. Petitioners submit these ex parte comments in response to the comments of the Public Utilities Commission of Ohio ("Ohio Commission" or "PUCO") of February 1, 2007. The PUCO comments continue to highlight and support Petitioners' arguments that of all the RBOCs, Qwest is the only one that lacks *any* colorable defenses to refunds under the Waiver Order¹ in 12 of its 14 states.

First, PUCO approved SBC-Ohio's proposed Public Access Line ("PAL") rates in 1997, whereas Qwest failed to file its basic PAL rates for review under the new service test ("NST") with any commission in a relevant state until 2002 and 2003.² Second, although Qwest's recent ex parte filing attempts to give the impression of state action similar to PUCO's, no commission in the relevant states reviewed Qwest's proposed basic PAL rates before 2002.³

¹ *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, 12 FCC Rcd 21,370 (Apr. 15, 1997) ("Waiver Order").

² In the 11 states relevant to the Davel Petition, with the exception of Colorado, which Petitioners addressed in the ex parte filing of September 18, 2006. Oregon is also different from Ohio, in that the Oregon PUC still has not concluded the review of Qwest's PAL rates, were at issue in April 1997 and are still not final. Nor has the Oregon PUC made a decision on refunds. Rather, the PUC has sought this Commission's guidance on the Waiver Order.

³ See fn. 6 regarding Colorado.

Marlene Dortch
February 22, 2007
Page 2

Finally, Petitioners respond to PUCO's mischaracterization of this Commission's Wisconsin Order, which clarified the NST but did not revise it.

1. Unlike Qwest's States, PUCO Reviewed SBC-Ohio's Rates Under the NST in 1997.

Unlike all of the relevant Qwest states, PUCO approved SBC's proposed PAL rates under the NST based on a review of the 1997-filed cost data, on September, 25, 1997. *PUCO Comments*, at 11-12. The Supreme Court of Ohio affirmed the PUCO's findings with respect to SBC-Ohio. *PUCO Comments*, at 6. Unlike Qwest, SBC-Ohio filed cost support data with the PUCO before this Commission's May 19, 1997 deadline. *PAO Petition* ¶ 9.⁴

Again, in contrast to the Davel Petition, to rule in favor of the PAO, the Commission would have to find that the PUCO erred in implementing the requirements of Section 276 of the Telecommunications Act of 1996 (the "Act") and this Commission's orders. Thus the Commission would have to engage in ratemaking, substituting the Commission's judgment for that of the PUCO's to find that SBC-Ohio's rates were not in compliance with the new services test in 1997. Again, this represents another key distinction with the Davel Petition, which does not ask the Commission to make any rate determinations.

In Petitioners' case, the only issues for this Commission to decide are questions of law; e.g., whether Qwest could comply with the Waiver Order and this Commission's 1996 Payphone Orders *without filing any costs and without seeking state commission review* of its existing PAL rates. Additionally, the Ninth Circuit has asked for the Commission's interpretation of the "scope" of its own Waiver Order. Specifically, in the unique case of Qwest, where Qwest delayed the cost filings and reviews that should have been made in early 1997 until 2002 and 2003, may the Waiver Order constitute a basis for refund claims? If the answer is yes, then the Davel case will go back to the district court to determine the amounts and time periods of such refunds.

Neither the Petitioners nor the courts have asked the Commission to make rate determinations or calculate damages. Moreover, the Davel Petition does not ask that any state commission nor federal or state court order be overturned. Unlike Ohio, no such orders exist.

2. Qwest's Recent Ex Parte Filings Falsely Seek to Create the Impression of State Review and Action Similar to PUCO's.

Pursuant to the Waiver Order issued by this Commission on April 15, 1997, the RBOCs were granted an extension until May 19, 1997, to have NST-compliant rates and supporting cost studies on file with the appropriate state utility commissions. Qwest ignored the filing directives of the Waiver Order and prior orders, however, and made no attempt at compliance

⁴ Petition of the Payphone Association of Ohio, CC Docket 96-128, filed Dec. 28, 2006.

Marlene Dortch
February 22, 2007
Page 3

until five years after the filing deadline had passed. In 2002, Qwest for the first time filed NST-compliant rates with the utility commissions for the states at issue.⁵ Those rates were generally less than half of what Qwest had charged under its unreviewed rates between 1997 and 2002.

After the Ninth Circuit issued its opinion in 2006,⁶ Qwest apparently began to realize the consequences of taking unto itself the ratemaking function that Congress delegated to the Commission and the Commission sub-delegated to state commissions. Thus, in its recent ex parte filings, Qwest has brought out the smoke and mirrors in an effort to make its behavior look like SBC-Ohio's and its states' actions look like those of PUCO. For example, in its October 24, 2006 ex parte filing in this docket, Qwest claims that "in 9 of Qwest's 14 states, state proceedings prior to 2002 resulted in formal adjustment to payphone rates." *Qwest Ex Parte*, Oct. 24, 2006, at 1. This claim is grossly misleading at best, if not plainly false. There have been only three states (Arizona, Montana, and Oregon) where Qwest made timely PAL filings in order to comply with the NST or where final orders were entered resolving litigation related to the NST.⁷ Those three states have been excluded from Petitioners' litigation against Qwest in order to avoid any issues of *estoppel* or *res judicata*. In the remaining states at issue, Qwest waited until 2002 to submit any PAL filings that would even arguably comply with the requirements of the NST. A summary of the true procedural history of the 14 Qwest states is attached to this letter as Exhibit 1.⁸

Again, while this Commission should not accept Qwest's version of the facts, it does not need to determine the factual dispute between Petitioners and Qwest. The district court on remand is well-equipped to determine whether or not Qwest filed the required cost studies by May 19, 1997, or otherwise obtained the required state commission review of its PAL rates under the NST before 2002.

⁵ The states at issue in Petitioners' lawsuit against Qwest in federal court are identified in the table attached as Exhibit 1 to this letter.

⁶ *Davel Communications, Inc. v. Qwest Corp.*, 460 F.3d 1075 (9th Cir. 2006).

⁷ In Colorado there was a proceeding in which Qwest filed PAL rates in 1999 in response to a Colorado PUC order requiring Qwest to do so. Those Qwest PAL rates were treated as interim pending further guidance from the FCC regarding the NST. The Colorado PUC then in 2002 directed Qwest to refile its PAL tariffs in compliance with the Wisconsin Order.

⁸ The Petitioners first filed this chart in their ex parte submission of September 18, 2006. Additional explanation and detail can be found in that filing.

Marlene Dortch
February 22, 2007
Page 4

3. PUCO Incorrectly Characterizes the Wisconsin Order, Which Clarified, But Did Not "Revise," the New Services Test.

In its Comments of February 1, 2007, PUCO claims that this Commission's Wisconsin Order⁹ "significantly revised how the NST is to be applied to payphone services." *PUCO Comments*, at 12. This Commission should affirmatively reject PUCO's assertion. The Commission has repeatedly stated that the Wisconsin Order merely *clarified*, but did not revise, the new services test. First, this Commission stated:

In the [Wisconsin] Order released today . . . *[t]he Commission affirmed* its earlier conclusion that the payphone provisions of the 1996 Act require Bell Operating Companies to set their intrastate payphone line rates in compliance with the Commission's new services test and *clarified* certain aspects of how the March 2000 Order applied that test. *Today's Order thus confirms the Commission's earlier decisions regarding pricing of intrastate payphone lines*

FCC Releases Payphone Orders, 2002 FCC Lexis 537 (emphasis added).

In 2004, this Commission again confirmed that its Wisconsin Order *clarified* the NST as adopted in 1996:

The Commission adopted the requirement that LECs price payphone lines under the new services test in its 1996 payphone orders. Thus, the Commission's order requiring application of the new services test to line rates had been in effect for five or six years when the final line cost estimates were made. In a subsequent order [the Wisconsin Order], which required certain Wisconsin LECs to submit cost justification for their payphone line rates directly to the Commission, the Common Carrier Bureau *issued guidance clarifying application of the new services test* for the benefit of state public service commissions.

In the Matter of Request to Update Default Compensation Rate for Dial-Around Calls from Payphones, Report and Order, 19 FCC Rcd. 15,636 at ¶ 60 (2004) (emphasis added). "A rule clarifying an unsettled or confusing area of the law 'does not change the law, but restates what the law according to the agency is and has always been . . .'" *Orr v. Hawk*, 156 F.3d 651, 654 (6th Cir. 1998) (quoting *Pope v. Shalala*, 998 F.2d 473, 483 (7th Cir. 1993)); see also *Reno-Sparks Indian Colony v. United States Env. Prot. Agency*, 336 F.3d 899, 909 (9th Cir. 2003).

The Ninth Circuit has also recognized that the Wisconsin Order *clarified* the NST:

⁹ *In re Wis. Pub. Serv. Comm'n, Mem. Op. & Order*, 17 F.C.C.R. 2051 (2002) ("Wisconsin Order").

Marlene Dortch
February 22, 2007
Page 5

In 2002, in a decision subsequently affirmed by the D.C. Circuit, the FCC *clarified the requirements of the new services test* as it applies to the payphone industry, making it clear that, as in other areas in which it has been applied, the new services test requires forward looking, cost-based rates. *In re Wis. Pub. Serv. Comm'n, Mem. Op. & Order*, 17 F.C.C.R. 2051 (2002) ("Wisconsin Order")

Davel Communications, Inc. v. Qwest Corp., 460 F.3d 1075, 1083 (9th Cir. 2006).

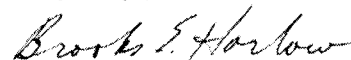
Moreover, even if this Commission had intended to revise the NST in its Wisconsin Order, it could not have done so without following the formal notice and comment procedure required by the Administrative Procedure Act ("APA"). 5 U.S.C. § 553(b). *See, e.g., Sprint Corp. v. FCC*, 315 F.3d 369, 372-78 (D.C. Cir. 2003) (holding the FCC violated the APA when it modified its payphone rules without proper notice).

Contrary to the PUCO's characterization of the Wisconsin Order, the NST has not changed since it was first adopted by this Commission with respect to payphone rates in 1996.

4. Conclusion

However the Commission rules on the petitions of the PAO and the other states, the Commission should note the important distinctions from the Davel Petition. In particular, the Commission should find that Qwest's acceptance of dial around compensation on April 15, 1997, without filing cost studies under the NST by the May 19, 1997 deadline subjects Qwest to refund claims under the Waiver Order and Section 276 of the Act. The time periods and amounts of those refunds can and should be determined by the district court.¹⁰

Very truly yours,



Brooks E. Harlow

cc: Ms. Pamela Arluk (via e-mail)
Ms. Lynn Engledow (via e-mail)
Ms. Diane Griffin-Holland (via e-mail)
Mr. Christopher Killion (via e-mail)
Mr. Al Lewis (via e-mail)
Mr. Tom Navin (via e-mail)
Ms. Tamara Priess (via e-mail)

¹⁰ Except in Oregon, where the refund amounts should be decided by the Oregon PUC in the pending cases.

MULLER | NASH LLP
ATTORNEYS AT LAW

Marlene Dortch
February 22, 2007
Page 6

Ms. Paula Silberthau (via e-mail)
Mr. Donald Stockdale (via e-mail)

SeaDocs: 265542.2

Exhibit 1¹¹

Arizona	N/A (not part of the Payphone Providers' claim).
Colorado	Qwest admits it made no filings pursuant to the NST by May 19, 1997. On complaint, the Colorado PUC kept case open for further FCC guidance. After FCC rejected Qwest's interpretation of the NST and filed NST-based rates, PSPs filed suit within 2 years of Qwest's filing of compliant tariffs.
Idaho	Qwest admits it made no filings pursuant to the NST until 2002.
Iowa	Qwest admits it made no filings pursuant to the NST until 2002.
Minnesota	Qwest admits it made no filings pursuant to the NST until 2002.
Montana	N/A (not part of the Payphone Providers' claim).
Nebraska	Qwest admits it made no filings pursuant to the NST until 2002.
New Mexico	Qwest admits it made no filings pursuant to the NST until 2002.
North Dakota	Qwest admits it made no filings pursuant to the NST until 2002.
Oregon	N/A (not part of the Payphone Providers' claim). However, both Qwest's PAL rates, which have been under review in Oregon since 1996, and PAL refunds are still awaiting final orders. The Oregon PUC awaits Commission guidance on refunds.
South Dakota	Qwest admits it made no filings pursuant to the NST until 2002. ¹²
Utah	Qwest admits it made no filings pursuant to the NST until 2002.
Washington	Qwest admits it made no filings pursuant to the NST until 2003.
Wyoming	Qwest admits it made no filings pursuant to the NST until 2002.

¹¹ Exhibit 1 was included in Petitioners' ex parte submission of September 18, 2006, and additional explanation of Exhibit 1 can be found in that submission.

¹² Only Qwest's "Smart PAL" rates were at issue there. Smart PAL rates are not part of the *Davel* case.

Brooks Harlow
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September 19, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 – 12th Street S.W.
Washington, D.C. 20554

Subject: In the Matter of Payphone Access Line Rates
CC Docket No. 96-128

Dear Ms. Dortch:

This firm represents the Northwest Public Communications Council (“NPCC”), an association of payphone service providers in the Northwest. NPCC submits this letter to point out several important facts that distinguish its claim against Qwest under the New Services Test (“NST”) that is pending before the Oregon PUC (“OPUC”) from all of the petitions for refunds under the NST that are currently pending in CC Docket No. 96-128.¹ From a procedural perspective, Oregon is: (1) somewhat different from the other Qwest states, because Qwest’s Public Access Line (“PAL”) rates were under review on and before May 19, 1997, due to a pending rate case; and (2) significantly different from the other RBOC’s states because there is no request that this Commission overturn the OPUC or an Oregon Court decision—the refund case is still pending and the OPUC is awaiting FCC guidance. Moreover, Qwest’s “pre-existing” PAL rates (as of April 15, 1997) were rejected by the Oregon Court of Appeals in 2004 in what is now a final and unappealable order.²

Because the OPUC case is significantly different from the other RBOC’s states, defenses the other RBOCs have raised to refund claims cannot apply to Oregon.³ Specifically: (1) the doctrine of laches cannot bar the NPCC’s claims because NPCC has been involved in continuous litigation with Qwest over its payphone rates since 1996 before the OPUC, (2) NPCC

¹ See *Infra* at n. 5.

² See *Infra* at p. 3.

³ The NPCC certainly does not concede that such defenses have any merit. NPCC simply wishes to note the distinctions that make application of the defenses in Oregon impossible.

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September 19, 2006
Page 2

did not file an FCC complaint with this Commission because it was already trying to get Qwest to comply with the NST in the OPUC rate case, and (3) res judicata does not bar the NPCC's claims because there is no OPUC order holding that NPCC's refund claim is foreclosed. To the contrary, the NPCC's refund case is still pending before the OPUC, and the OPUC has actively sought this Commission's guidance on refunds.⁴

1. Background

NPCC is filing this ex parte letter because it recently learned that Commission Staff asked American Public Communications Council's ("APCC") counsel Bob Aldrich whether the pending petitions of five payphone associations ("Associations"⁵) in CC Docket No. 96-128 are barred by laches or res judicata and why the Associations did not file a complaint with this Commission. The Associations' petitions seek refunds from RBOCs under the Commission's New Services Test ("NST") and related orders ("Payphone Orders") in CC Docket No. 96-128.

The Commission Staff's questions involve issues similar to those raised in a pending OPUC proceeding, discussed below, in which NPCC seeks a refund for its members from Qwest for payphone services overcharges under the NST and the Payphone Orders. NPCC believes that the Commission Staff should know the answers to these questions as they relate to NPCC, because, as explained below, the OPUC has asked this Commission to clarify the NST so that the OPUC can enter a ruling that is consistent with federal law.

2. NPCC's claim is not barred by laches because NPCC has been challenging Qwest's payphone rates before the OPUC since 1996.

The NPCC has diligently pursued its NST claims against Qwest *for ten years*. In 1995, the OPUC opened a docket to examine all of Qwest's rates, including its payphone rates. *See* OPUC Docket No. UT-125 ("*Oregon Rate Case*"). NPCC intervened in that docket on September 13, 1996. During the course of the *Oregon Rate Case*, NPCC filed numerous briefs alleging that Qwest was charging NPCC's members rates that exceeded NST-allowable amounts and participated in a hearing in which NPCC's witness testified to that fact.

The OPUC issued orders in 2001 and 2002 ruling against NPCC, in part. Although the OPUC lowered Qwest's PAL rates considerably from the "pre-existing" 1997 rates, the OPUC did not bring Qwest's rates fully into compliance with the NST. *See* OPUC Order No. 01-810, Docket UT-25/Phase II (Sept. 14, 2001) and Order No. 02-009, Docket

⁴ *See Infra at p. 3.*

⁵ The Associations include the Independent Payphone Association of New York, the New England Public Communications Council, Southern Public Telecommunications Association, the Florida Pay Telephone Association, and the Indiana Pay Telephone Association.

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Page 3

UT-125/Phase II (Jan. 8, 2002). The NPCC appealed these orders because the OPUC's analysis was inconsistent with the NST.

The NPCC won the *Oregon Rate Case* on appeal. The Oregon Court of Appeals on November 10, 2004 issued an order ruling that the OPUC did not properly apply the NST. *Northwest Public Comm's Council v. PUC*, 100 P.3d 776 (2004). The Court remanded the case to the OPUC for a final determination of how Qwest should comply with the NST, specifically noting that "[t]he PUC must reconsider its order in light of the New Services Order and other relevant FCC orders." *Id.* at 779. The *Oregon Rate Case* is still on remand, with the OPUC having very recently denied Qwest's request to offset PAL rate decreases with increases in other rates.

The NPCC is also pursuing another action before the OPUC that is closely related to the *Oregon Rate Case*. Specifically, NPCC filed a separate complaint on May 14, 2001 with the OPUC ("*Oregon Refund Case*") seeking refunds for Qwest's violation of the NST.⁶ NPCC asked that the refunds in the *Oregon Refund Case* be determined by the rate set in the *Oregon Rate Case*. The *Refund Case* was placed on hold pending the outcome of the *Oregon Rate Case*.

After the Court of Appeals reversed the OPUC's order in the *Oregon Rate Case*, the NPCC sought summary judgment in the *Refund Case* on Qwest's liability for refunds. However, the OPUC decided to stay the *Refund Case* pending this Commission's ruling in Docket 96-128. *See* Ruling, Disposition: Proceeding Held In Abeyance, OPUC Docket No. DR 26/UC 600 (March 23, 2005); *See* Order, Disposition: ALJ Ruling Affirmed, Order No. 05-208, OPUC Docket No. DR 26/UC 600 (May 3, 2005). The OPUC then sent a letter to this Commission requesting "prompt Commission action in CC Docket 96-128" that would "allow states, including Oregon, to determine whether incumbent local exchange carriers are bound by the refund provisions of Commission Order DA 97-805 (the *Waiver Order*)." *Letter of Oregon Public Utility Commissioner Lee Beyer to FCC Chairman Kevin Martin* (Nov. 23, 2005). (*See Attached*).

The NPCC's situation is thus different from that of the other Associations that have pending NST petitions with the Commission. Although the NPCC and the Associations are all victims of RBOC failure to comply with the NST, the other Associations are appealing the adverse decisions of state utility commissions. NPCC has no adverse commission decision, and the both cases are still pending.

⁶ The refund complaint was timed to be filed within two years of the first reduction in Qwest's "pre-existing" 1997 PAL rates. Although Qwest first lowered PAL rates in 1999 in the *Oregon Rate Case*, it did not pay refunds to NPCC members pursuant to the Commission's *Waiver Order*.

Marlene H. Dortch
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NPCC's case is, however, similar to the other Association petitions because it is beyond reasonable dispute that Qwest overcharged the NPCC's members during this period. After the release of this Commission's New Services Order⁷ in 2002 in CC Docket No. 96-128, Qwest belatedly dropped its Oregon PAL rates. While the OPUC has yet to approve a legal public access line ("PAL") rate for Qwest as complying with the NST—nearly ten years after Qwest was supposed to have complied with it—indications are that Qwest overcharged PSPs for PAL service by between \$20 and \$50 per line per month from April 15, 1997 through March 2003. For example, in 1997, Qwest charged up to \$60 per month or more⁸ for PAL service. For most of 1998 to 2003, Qwest charged about \$30 for PAL service. Earlier this year, on remand from the Court of Appeals, Qwest proposed to slash its Oregon PAL rate to under \$10, alleging that the new rate complied with the NST. Thus, for seven years Qwest charged PSPs three times to six times the rate it should have been charging under the NST.

3. NPCC did not file a complaint with the FCC because it had a pending complaint with the OPUC.

NPCC did not need to file a complaint with this Commission because it was already participating in the *Oregon Rate Case* and *Oregon Refund Case* before the OPUC, starting in 1996. Thus a Commission complaint would have been duplicative. Despite the fact that NPCC filed no complaint with the Commission, the NPCC participated actively in CC Docket No. 96-126 by filing three sets of comments and engaging in multiple meetings with various Commission Staff.

4. Res judicata bars many Qwest claims but not NPCC claims.

The NPCC's NST cases are not barred by res judicata, as there is no OPUC order holding that refunds are or are not due. Further, as a result of the Court of Appeals' reversal, there is no valid Oregon order holding that Qwest's rates meet the NST or that Qwest complied with the NST.

In contrast, many Qwest's defenses to the NPCC's NST case are subject to res judicata established by the following findings of the Court of Appeals of Oregon:

- The Commission's Payphone Orders in CC Docket No. 96-128, specifically including the 2002 New Services Order, are binding on the OPUC (and thus Qwest) under the "preemptive effect of Section 276." *NPCC*, 100 P.3d at 778.

⁷ Memorandum Opinion and Order, 17 FCC Rcd 2051 (2002) ("New Services Order").

⁸ Until late 1997, Qwest imposed mandatory measured service on PSPs in Oregon with exorbitant usage charges, meaning that there was almost no upward limit to the PAL rate.

Marlene H. Dortch
September 19, 2006
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- The OPUC did not correctly apply the NST to Qwest's rates. *Id.*
- The OPUC's (and Qwest's) use of traditional "rate of return" ratemaking violated the NST. *Id.* at 777-779.

The OPUC must now scrutinize Qwest's PAL rates using the NST and the Payphone Orders rather than traditional rate of return principals. Since Qwest's PAL rates were set under a rate of return model, there is no doubt that the OPUC will find them to be above the NST-allowable level and subject to refunds.

We hope this letter answers the Commission Staff's inquiries. Please contact me if you have any other questions.

Sincerely,



Brooks E. Harlow

cc: w. enc: Ms. Pamela Arluk (via e-mail)
Ms. Amy Bender (via e-mail)
Ms. Lynne Engledow (via e-mail)
Ms. Diane Griffin Holland (via e-mail)
Mr. Christopher Killion (via e-mail)
Mr. Marcus Maher (via e-mail)
Ms. Tamara Priess (via e-mail)
Ms. Paula Silberthau (via e-mail)

Marlene H. Dortch
September 19, 2006
Page 6

File No.: 099999-7002
Doc ID: SEADOCS:243175.3

Attachment

Letter of Oregon Public Utility Commissioner Lee Beyer to FCC Chairman Kevin Martin
(Nov. 23, 2005)



Oregon

Theodore R. Kulongoski, Governor

Public Utility Commission

550 Capitol St NE, Suite 21

Mailing Address: PO Box 214

Salem, OR 97308-214

Consumer Service

1-800-522-240

Local: (503) 378-660

Administrative Service

(503) 373-739

November 23, 2005

Chairman Kevin Martin
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

RE: CC docket 96-128

Dear Chairman Martin:

We are writing to request prompt Commission action in CC Docket 96-128, the Consolidation Petition proceeding. Commission action in the docket would allow states, including Oregon, to determine whether incumbent local exchange carriers are bound by the refund provisions of Commission Order DA 97-805 (the *Waiver Order*).

This letter is prompted by a specific issue we are addressing. Specifically, we must determine whether the *Waiver Order* requires Qwest to refund a portion of the intrastate Payphone Access Line (PAL) rates paid by Payphone Service Providers (PSPs) since April 15, 1997, because those rates do not comply with the "New Services Test" established in the Commission's *Payphone Orders*. This determination has been mandated by the Oregon Courts.

The Oregon Commission could, of course, interpret Order DA 97-885 in an order. If we were to do so, however, we are certain that either Qwest or the PSPs would appeal our decision. This would likely lead to several years of litigation concerning issues that can best be resolved by your Commission. The only way to avoid such a scenario would be for the Commission itself to interpret the *Waiver Order*. That is why we are requesting that the Commission act as expeditiously as possible in CC Docket 96-128.

Thank you for your consideration.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

cc: Brooks Harlow, Miller Nash
Don Mason, Qwest

Munnerlyn, Carol J.

From: Harlow, Brooks
Sent: Monday, March 05, 2007 2:46 PM
To: Daniel.gonzalez@fcc.gov
Cc: Justin Lilley
Subject: CC Dkt 96-128

Thank you again for taking the time to meet with us today. You requested that we send you all our pleadings in the docket. As I understand it, you are looking for our petition, reply, and subsequent ex partes. Before I clog your inbox with all of that, I thought you might appreciate the attached 2 page summary of our court and Oregon PUC claims. It's very high level, but hopefully it will give you a roadmap to sort through the pleadings, which I will also send in a moment.

Please feel free to contact me or Mr. Lilley if you have any questions.

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Davel Dillner Ex
Parte submiss...

MILLER | NASH_{LLP}
A T T O R N E Y S A T L A W

Ex Parte Submission on Behalf of Northwest Public Communications Council

Regarding pending petitions of for declaratory ruling of:

Illinois Public Telecommunications Association ("IPTA") (July 30, 2004)
Independent Payphone Association of New York ("IPANY") (Dec. 29, 2004)
Southern Public Communications Association ("SPCA") (Nov. 9, 2004)
And
Florida Public Telecommunications Association ("FPTA") (Jan. 31, 2006)
("Petitions")

CC Docket 96-128
May, 2006

Outline and Selected Formal Comments

Brooks E. Harlow
Miller Nash LLP
601 Union Street
Suite 4400
Seattle, WA 98101-2352
Voice: 206-777-7406
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<mailto:brooks.harlow@millernash.com>

Attorneys for Northwest Public Communications Council

- I. Update re status of *Qwest* cases.
- A. Ninth Circuit opinion rejects Qwest defenses to refunds (11 states)
- "[T]he filed-tariff doctrine does not bar a suit to enforce a command of the very regulatory statute giving rise to the tariff-filing requirement..."
 - **The filed-tariff doctrine does not apply to the refund requirement** because the FCC expressly required a departure from the filed rates (i.e., refunds).
 - However, the FCC should determine the *length* of the refund period; i.e., whether refunds are only owed for 45 days after Waiver Order or whether refund period continues until such a time as Qwest files NST-compliant tariffs.
- B. Oregon PUC case (*Northwest Pub. Comm. Council, "NPCC" v. Qwest*)
- Case is on remand and state Circuit Court has retained jurisdiction
 - OPUC holding case in "abeyance," pending FCC action
 - OPUC wrote to Chmn. Martin on 11/23/05, requesting guidance
 - Circuit Court gave OPUC until 8/21/06 to act or report back
- II. The Commission's Ruling on the Pending Petitions¹ Involves a Simple Fact Pattern and Should be Decided Based Application of Simple Legal Requirements
- A. Congress forbade the RBOCs from discriminating against PSPs² after April 15, 1997—47 USC § 276(a)
- B. Per Congress' directive, the Commission held that an RBOC could only eliminate discrimination by complying with the new services test ("NST")
- C. In most states, the RBOCs did not comply with the NST for many years; in most Qwest states, ***Qwest did not even make any NST filings until 2002***
- D. Thus, the RBOCs violated § 276(a), the Commission's payphone orders, and the Commission's "*Refund Order*" (DA 97-805)
- The Commission should at least interpret—if not enforce—its *Refund Order*
 - Apart from the *Refund Order*, PSPs independent cause of action for damages under §§ 206 and 207 for RBOCs' violation of § 276(a)
- E. Because the Commission adopted a Federal standard, the RBOCs' state law-based defenses, such as filed tariff, do not apply, as the Ninth Circuit has now established
- F. Qwest has received an unlawful windfall at the expense of the PSPs

¹ IPTA, IPANY, SPCA, and FPTA (plus the Massachusetts Supreme Court questions)

² Payphone service providers

**ILLUSTRATIVE³ QWEST PAL RATES BEFORE AND AFTER NST-
COMPLIANCE**

QWEST STATE	QWEST PAL RATES, ⁴ 1997- 2002	NEW QWEST PAL RATES AFTER 2002	DOLLAR AMOUNT OF RATE CHANGES	PERCENT 97- 02 RATES EXCEEDED NST RATES
AZ	\$34.30	\$10.44	-\$23.86	229%
CO	\$43.54	\$15.04	-\$28.50	189%
ID	\$58.74	\$16.41	-\$42.33	258%
IA	\$31.35	\$14.20	-\$17.15	121%
MN	\$43.61	\$15.13	-\$28.48	188%
MT	\$38.94	\$16.91	-\$22.03	130%
NE	\$33.80	\$19.32	-\$14.48	75%
NM	\$43.74	\$12.80	-\$30.94	242%
ND	\$31.54	\$11.93	-\$19.61	164%
OR	\$30.50	\$9.73	-\$20.77	213%
SD	\$38.65	\$18.99	-\$19.66	104%
UT	\$37.00	\$24.79	-\$12.21	49%
WA	\$28.89	\$14.10	-\$14.79	105%
WY	\$28.10	\$18.58	-\$9.52	51%

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Attorneys for Davel Communications, et al.

³ These rates are “illustrative” because Qwest has multiple rate plans in most states. In some states rates are measured, so the basic line rate plus estimated usage and mandatory EAS charges are shown. The rates shown exclude EUCL, taxes, and fees.

⁴ Public Access Line plus Fraud Protection, a/k/a screening